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Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

ELIZABETH GEISER,

Petitioner,

v.

RONDA MATHEW, as personal representative of the estate of R. G. Mathew, et al.,

Respondents.

On Petition for Writ of Certiorari to the California Court of Appeal, Third District

PETITION FOR WRIT OF CERTIORARI

PAUL D. SHELDON
Counsel of Record
MARK A. CAMPBELL
SCHONEMAN, CAMPBELL & SHELDON
400 Capitol Mall, 11th Floor
Sacramento, California 95814
(916) 558-6185

Attorneys for Petitioner Elizabeth Geiser

Midwest Law Printing Co., Chicago 60610, (312) 321-0220

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QUESTIONS PRESENTED FOR REVIEW

1. Has the California Court of Appeal impinged upon the right of privacy guaranteed by the United States Constitution by applying the "litigation privilege" contained in California Civil Code Section 47(b) so as to preclude recovery for wrongful disclosure of confidential psychotherapy records in litigation, without obtaining prior judicial review through discovery statutes or other means.

2. Has the California Court of Appeal impinged upon the right of privacy guaranteed by the United States Constitution by applying the "litigation privilege" contained in California Civil Code Section 47(b) so as to preclude recovery for wrongful disclosure of confidential letter from district attorney in litigation, without obtaining prior judicial review through discovery statutes or other means.

3. Has the California Court of Appeal impinged upon the right of privacy guaranteed by the United States Constitution by applying the "litigation privilege" contained in California Civil Code Section 47(b) so as to preclude recovery for wrongful disclosure of confidential mediation documents in litigation, without obtaining prior judicial review through discovery statutes or other means.

4. Has the California Court of Appeal impinged upon the right of privacy guaranteed by the United States Constitution by applying the "litigation privilege" contained in California Civil Code Section 47(b) so as to preclude recovery for wrongful disclosure of a confidential letter to title company in litigation, without obtaining prior judicial review through discovery statutes or other means.

PARTIES

Petitioner Elizabeth Geiser was the plaintiff in the underlying action, case number 53132, filed in the Superior Court of the State of California, in and for the County of Nevada.

Respondents, who were defendants in Case No. 53132 below, include Ron Mathew, Dewey Harpainter, Esq., Hector Figueroa, and James Keefer, Esq. Ron Mathew is now deceased, and Ronda Mathew, as personal representative of the estate of Ron Mathew, should be substituted as a respondent on this petition.

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PRELIMINARY STATEMENT

This case arises from a claim by Petitioner Elizabeth Geiser to recover damages for the wrongful disclosure of her confidential psychotherapy records and other confidential documents by her former husband, Ron Mathew (now deceased and represented by Ronda Mathew as administrator of his estate), together with Mr. Mathew's attorney, Dewey Harpainter, and Hector Figueroa and his attorney, James Keefer. The documents were maliciously disclosed to intimidate and harass Ms. Geiser in litigation which she brought to recover money which she had loaned to Ron Mathew's corporation.

In California, a litigant who desires to sue an attorney and the attorney's client for conspiracy (in this case a conspiracy to violate Ms. Geiser's rights of privacy), must first file a petition pursuant to California Civil Code Section 1714.10, whereby the plaintiff must show a prima facie case of conspiracy before the complaint may be filed in Superior Court. Ms. Geiser filed a Section 1714.10 petition and defendants asserted the "litigation privilege" found in California Civil Code Section 47 as a defense to the action. The Superior Court accepted the statutory privilege as a bar to constitutional rights, and thus denied the petition as barred by the privilege.

Thereafter, the Court of Appeal affirmed the trial court's denial of the petition, and the California Supreme Court denied Ms. Geiser's petition for review. If this Petition for Writ of Certiorari is granted and this Court agrees with Ms. Geiser's position, the effect will be to vacate the decision of the California Court of Appeal, and remand the case to the trial court with instructions to grant the petition and allow the complaint for recovery

of damages and for injunctive relief to be filed in the Superior Court of Nevada County, California.

CITATION OF REPORTS OF OPINIONS AND ORDERS

The Superior Court of Nevada County, California, entered a written order denying Petitioner Elizabeth Geiser's petition pursuant to California Civil Code Section 1714.10, to file a complaint for civil conspiracy to violate rights of privacy, on April 19, 1995, in Nevada County Superior Court Action No. 53132. There is no other citation available for the written order. A copy of the order appears in the appendix to this petition at pages A1-A2.

The California Court of Appeal, Third District, issued its written opinion affirming the trial court's order on May 31, 1996, in appeal number C021291. The opinion was ordered not published, and thus, there is no official citation to this opinion. A copy of the appellate court's opinion is included in the appendix to the petition at pages A3-A12.

The Supreme Court of California denied petitioner Elizabeth Geiser's petition for review on September 4, 1996. There is no official citation to the order denying the petition for review. A copy of the order is included in the appendix to this petition, at A13.

JURISDICTIONAL STATEMENT

The Appellate Court opinion sought to be reviewed was entered by the California Court of Appeal, Third District, in Case No. C021291 on May 31, 1996. The California Supreme Court denied a discretionary petition for review on September 4, 1996.

This Court has jurisdiction pursuant to 28 U.S.C. Section 1257(a), which provides that this Court may review final judgments rendered by the highest court of a state in which a decision could be had, where the validity of a statute of the state is drawn in question on the ground of its being repugnant to the Constitution of the United States.

Pursuant to Supreme Court Rule 29.4(c), this Petition for Writ of Certiorari has been served on the Attorney General of the State of California because the constitutionality of California Civil Code Section 47 is drawn into question, but neither the state, nor any agency, officer, or employee thereof is a party to the underlying action. Therefore 28 U.S.C. Section 2403(b) may apply.

CONSTITUTIONAL PROVISIONS AND STATUTES

The following constitutional provisions and statutes are involved in the case. However, due to the length of the provisions involved, they are set forth verbatim in the appendix to the petition, at A14-A18.

California Code of Civil Procedure Section 47

California Civil Code Section 1714.10

California Constitution, Article I, Section I

STATEMENT OF THE CASE

This appeal arises from the trial court's denial of Elizabeth Geiser's petition pursuant to California Civil Code Section 1714.10 to file a complaint for civil conspiracy to violate her right of privacy, against her ex-husband and his attorney and against her ex-husband's business partner and his attorney. Confidential psychotherapy reports and other private, confidential documents were secretly obtained by the ex-husband from Ms. Geiser without her knowledge or consent. Thereafter, the documents were appended to various court documents and pleadings by the ex-husband, his business partner and the two attorneys in three separate Superior Court actions, in an attempt to embarrass and humiliate Ms. Geiser, under the pretext of submitting the records in a judicial proceeding for the purpose of invoking the privilege set forth in Civil Code Section 47. The disclosure was made without any attempt to obtain the documents through discovery or by any means which would require judicial review of the documents prior to their dissemination. A brief description of the documents at issue and the nature of the actions in which the documents were wrongfully disclosed is set forth for the convenience of the Court.[1]

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[1] The psychotherapy records and other confidential documents are not set forth verbatim herein, nor appended to this petition, so that the confidential information therein will not be further disseminated. If review is granted, the records will be available for the Court in the Record on Appeal. Petitioner also requests that the Court limit its public description of the documents as much as possible to avoid further disclosure of sensitive information. (*Cf. Cutter vs. Brownbridge*, 186 Cal. App.3d 836, 849, fn. 1 (1986).)

Petitioner's Confidential Psychotherapy Records.

In December, 1987, and March, 1988, Elizabeth Geiser underwent psychiatric evaluations by doctors Alkar and Suskind in connection with a worker's compensation claim related to her employment as a peace officer. Each doctor prepared a written report, copies of which were given to Ms. Geiser. Ms. Geiser did not share the information in the reports with any defendant, nor did she give defendants access to or authority to obtain access to the reports. She eventually learned that copies of the reports had been stolen from her private belongings.

Petitioner's Confidential Letter From Nevada County District Attorney.

On May 18, 1989, Ms. Geiser received a letter from the Nevada County District Attorney concerning a criminal matter relating to her ex-husband's former employer, which, when taken out of context and without regard to the lack of further action taken by the District Attorney, is emotionally distressing and embarrassing to Ms. Geiser. The letter is also harmful to her reputation in the community, both socially and professionally, since Ms. Geiser was a court investigator for Nevada County Superior Court for a number of years, and continued thereafter to attempt to obtain business from local attorneys and judges as an independent investigator. At no time did Ms. Geiser authorize Ron Mathew or any other defendant to use, disseminate, or even possess the May 18, 1989 letter from the District Attorney.

Petitioner's Confidential Mediation Documents.

In Ms. Geiser's divorce action against Respondent Ron Mathew (now deceased), her attorney filed a Confidential Statement of Issues and Contentions for Mediation, which she understood to be made confidential by an order of the Superior Court. She understood and believed at the time of creating the confidential statement that the matters contained therein would remain confidential, would not be disclosed to anyone other than Ron Mathew and his attorney, and then only for purposes of the divorce action, Nevada County Superior Court Action Number 42725. Ms. Geiser never authorized Mr. Mathew or his attorneys, or anyone else, to use the confidential statement of issues and contentions for mediation for any purpose other than mediation in Nevada County Superior Court Action Number 42725.

Petitioner's Confidential Letter To The Title Company.

On June 24, 1993, Elizabeth Geiser signed a letter written by her attorney to Empire Title Insurance Company for the purpose of advising how escrow instructions should be handled. In the course of that letter, Ms. Geiser made comments concerning the stipulated judgment on bifurcated issues which had been entered by Judge Berman in the divorce action. However, at no time did she give Ron Mathew, his attorneys, or anyone else the authority to have access to or use that letter, and understood it to be confidential between herself and Empire Title Insurance Company.

Wrongful Disclosure In The "Loan-Recovery Action" (No. 49132).

Ms. Geiser brought Nevada County Superior Court Action No. 49132 to recover money damages for loans made by her to Ron Mathew's corporation. Respondents filed the psychiatric reports, the divorce mediation document, and the letters from the district attorney and to the title company in support of a motion to strike. The grounds of the motion were:

> [T]he second cause of action is beyond the scope of the court order allowing plaintiff to amend his complaint; it is improper in that it denies proper notice in circumvention of the statutory requirements of Corporations Code section 800, in prejudice to defendant's rights; and that plaintiff has failed to exhaust administrative remedies.

The confidential documents were again submitted to the court at oral argument, as separate exhibits for the oral argument.

The documents were also filed in support of another motion to strike, brought on the following grounds:

> service of the summons and complaint on defendant was over six months after filing of complaint, in violation of California Rules of Court section 1911 and Local Rules of Court, Nevada County Superior Court, Chapter 16.

Wrongful Disclosure In The Motion To Set Aside Stipulated Judgment (No. 42725).

Ms. Geiser also filed a motion in the divorce action to set aside the stipulated judgment on grounds of fraud and mistake. The psychiatric records, from some five to

six years prior to the stipulated judgment, were filed in opposition to the motion.

Wrongful Disclosure In The "Malicious Prosecution" Action.

Respondent Mathew filed an action against Ms. Geiser for, inter alia, malicious prosecution. In opposition to a demurrer to the complaint, Respondents filed the psychiatric reports, despite the fact that they were not made part of the complaint nor referred to therein.

Superior Court Uses Statutory Privilege To Deny Petition To File Complaint For Violations Of Constitutional Rights of Privacy.

Ms. Geiser filed a Petition pursuant to Civil Code Section 1714.10, to file her Complaint for Civil Conspiracy to Violate her Rights of Privacy against her ex-husband, Ron Mathew and Mathew's attorney, Dewey Harpainter, as well as Mathew's business partner, Hector Figueroa and his attorney, James Keefer. The petition also sought to have the confidential records sealed in all cases in which they had been filed. Defendants opposed the petition, citing the "litigation privilege" of Civil Code Section 47, which provides, in relevant part: "A privileged publication or broadcast is one made: . . . (b) In any . . . (2) judicial proceeding. . . ." In reply, Petitioner relied upon, inter alia, *Rancho La Costa, Inc. vs. Superior Court,* 106 Cal.App.3d 646 (1980), which held that Civil Code 47 privileges could not succeed against federal constitutional privacy interests.

The petition was denied by the Superior Court by the following written order:

IT IS HEREBY ORDERED:

(1) The Motion for leave to file civil conspiracy complaint against attorneys is denied.

(2) The Motion to strike the complaint is granted.

(3) The Motion for sanctions is denied; and

(4) The Motion to seal the records is denied.

A copy of the Superior Court order is set forth in the Appendix at A1-A2.

The California Appellate Court Affirms The Superior Court Order.

Ms. Geiser filed an appeal with the Third District Court of Appeal, seeking reversal of the order denying her petition pursuant to Civil Code Section 1714.10. In that appeal, Petitioner again relied upon, inter alia, *Rancho La Costa, Inc. vs. Superior Court,* 106 Cal.App.3d 646 (1980), which held that Civil Code 47 privileges could not succeed against federal constitutional privacy interests. The Court of Appeal affirmed the order of the trial court by an opinion filed on May 30, 1996. A copy of the opinion is set forth herein in the Appendix at A3-A12.

The California Supreme Court Denies Discretionary Review.

Ms. Geiser filed a Petition for Review in the California Supreme Court seeking reversal of the appellate court's decision. The Petition was denied by written order on September 4, 1996. A copy of that order is set forth in the Appendix at A13.

REASONS WHY CERTIORARI SHOULD BE GRANTED

The California Court of Appeal and the Superior Court of Nevada County, California, have interpreted and applied California Civil Code Section 47, in particular the "litigation privilege" found therein, in a manner so as to deny Petitioner Elizabeth Geiser the right to recover damages and obtain injunctive relief for violations of her constitutional right of privacy, through the wrongful and malicious public disclosure of her personal and confidential psychotherapy records and other confidential documents.

For the reasons set forth below, and to be set forth in briefs on the merits should this petition be granted, this Court should recognize that the "zones of privacy" inherent in the Bill of Rights of the United States Constitution and recognized by this Court in numerous and various contexts over the last 30 years, extends to protect a patient's interest in psychotherapeutic records and other documents of a confidential nature. Furthermore, petitioner respectfully submits that this Court should recognize that such a right of privacy prevails over a state's interest in immunizing its litigants from liability for disclosure of those documents, at least where those litigants make no attempt to obtain prior judicial review of the documents to be disclosed.

I.

THIS COURT HAS LONG RECOGNIZED A RIGHT OF PRIVACY WHICH WOULD INCLUDE CONFIDENTIAL PSYCHOTHERAPY RECORDS

Since *Griswold vs. Connecticut,* 381 U.S. 479 (1965), this Court has recognized a right of privacy inherent in the United States Constitution, residing in the "penumbras" and "emanations" of guarantees included in the Bill of Rights to the Constitution. Although *Griswold* involved the invalidation of state statutes because they restricted the right of married persons to use contraceptive devices, the Court has gone on to expand the recognized zones of privacy to include other areas, such as contraceptive use not covered in *Griswold* (*Eisenstadt vs. Baird*, 405 U.S. 438 (1972); *Carey vs. Population Services International,* 431 U.S. 678 (1977)), interracial marriage (*Loving vs. Virginia*, 388 U.S. 1 (1967)), restrictions on the ability of poor persons to marry (*Zablocki vs. Redhail,* 434 U.S. 374 (1978)), and numerous issues involving abortion rights (*Roe vs. Wade*, 410 U.S. 113 (1973), *Doe vs. Bolton,* 410 U.S. 179 (1973), *Planned Parenthood Association of Kansas City, Missouri, Inc. vs. Ashcroft*, 462 U.S. 476 (1983) and *Thornburgh vs. American College of Obstetricians and Gynecologists,* 476 U.S. 747 (1986)).

Recognition of these "zones of privacy" were grounded in the acknowledgment that some areas of human life are so important and of such value, not only to the individual, but to society, that they must be protected even at the cost of defeating other important interests. Indeed, the *Griswold* opinion, which was the genesis of the federal constitutional right to privacy, has been described as

"correct in finding that the value of privacy, *including freedom from government intrusion with private thoughts*, association and liberty, had long been part of American legal philosophy." (Emphasis added.) (Rotunda & Nowak, *Treatise on Constitutional Law, Substance and Procedure* (2d ed. 1992), Section 18.27, p. 302.)

More recently, this Court applied the interest in preserving the confidentiality of sensitive information in *Detroit Edison Company vs. National Labor Relations Board,* 440 U.S. 301 (1979). In that case, this Court held that an order of the NLRB ordering an employer to turn over employee psychological aptitude testing information to a union was an abuse of discretion, based upon the interest in maintaining confidentiality of those psychological records. This Court stated, at 440 U.S. at 318, fn. 16:

> A person's interest in preserving the confidentiality of sensitive information contained in his personnel files has been given forceful recognition in both federal and state legislation governing the record keeping activities of public employers and agencies.

This Court also acknowledged the "sensitivity of any human being to disclosure of information that may be taken to bear on his or her basic competence. . . ." (440 U.S. 318.)

Indeed, just this year, this Court confirmed the "important interests" and "transcendent importance" of maintaining confidentiality of psychotherapy records, in recognizing a federal evidentiary privilege between psychotherapist and patient. In *Jaffee vs. Redmond,* ___ U.S. ___, 1996 WestLaw 315841 (1996), this Court determined that conversations between an on-duty police officer,

sued for shooting and killing an individual in the line of duty, and the police officer's psychotherapist, were protected from compelled disclosure under Federal Rule of Evidence 501. In so holding, the Court clearly articulated the importance of preserving confidentiality of psychotherapeutic records:

> Like the spousal and attorney-client privileges, the psychotherapist-patient privilege is 'rooted in the imperative need for confidence and trust.' [citation omitted] . . . Effective psychotherapy . . . depends upon an atmosphere of confidence and trust in which the patient is willing to make a frank and complete disclosure of facts, emotions, memories, and fears. Because of the sensitive nature of the problems for which individuals consult psychotherapists, disclosure of confidential communications made during counseling sessions may cause embarrassment or disgrace. For this reason, the mere possibility of disclosure may impede development of the confidential relationship necessary for successful treatment.

(1996 WL 315841, p. 6.)

This Court continued its analysis by quoting with approval from the Judicial Conference Advisory Committee report recommending that Congress recognize a psychotherapist privilege as part of the proposed Federal Rules of Evidence:

> A psychiatrist's ability to help her patients is completely dependent upon (the patient's) willingness and ability to talk freely. This makes it difficult, if not impossible, for (a psychiatrist) to function without being able to assure . . . patients of confidentiality, and indeed, privileged communication. Where there may be exceptions to this

> general rule . . ., there is wide agreement that confidentiality is a *sine qua non* for successful psychiatric treatment. Advisory Committee's notes to proposed rules, 56 F.R.D. 183, 242 (1972) (Quoting Group for Advancement of Psychiatry Report No. 45, Confidentiality and Privileged Communication in the Practice of Psychiatry 92 (June, 1960).

(*Id.*)

This Court expressly noted that the protection of confidential communications between a psychotherapist and patient from involuntary disclosure serves important private and public interests, concluding that "the mental health of our citizenry, no less than its physical health, is a public good of transcendent importance." (1996 WL 315841, p. 6.)

The concerns and reasoning of this Court with regard to the privacy interests inherent in confidential communications between psychotherapist and patient have been reflected by the courts of review of the State of California, which have recognized a constitutional right of privacy in psychotherapeutic records.

Article I, Section I, of the California Constitution contains a "right to privacy" as an inalienable right of each citizen of the State of California. The question of whether psychotherapy records fall within that constitutional right of privacy has been answered clearly in the affirmative by the California courts of review on numerous occasions. The first such ruling was *In re: Lifschutz,* 2 Cal.3d 415, 431-432 (1970), wherein the California Supreme Court found that "the confidentiality of the psychotherapeutic session falls within one such zone [of constitutionally guaranteed privacy]." Quoting from a

reference to *Guttmacher, et al., Psychiatry and the Law* (1952), p. 272, the California Supreme Court noted that a psychiatric patient must expose "his entire self, his dreams, his fantasies, his sins, and his shame" to the psychotherapist. Such confidence would be impossible, the court noted, if the patient knew that the psychiatrist would then reveal these communications "to the whole world from a witness stand." (2 Cal.3d at 431.)

More recently, the California Supreme Court has reaffirmed the foundation for recognizing that psychotherapy records fall within the constitutionally protected "zones of privacy," stating in *Long Beach Employee's Association vs. City of Long Beach,* 41 Cal.3d 937, 944 (1986):

> If there is a quintessential zone of human privacy, it is the mind. Our ability to exclude others from our mental processes is intrinsic to the human personality.

The California Courts of Appeal have likewise consistently held that psychotherapy records are entitled to constitutional protection. *Cutter vs. Brownbridge*, 183 Cal.App.3d 836 (1986) involved both questions before this Court, *i.e.,* whether psychotherapy records are protected by a constitutional right of privacy, and whether California's "litigation privilege" found in Civil Code Section 47 can defeat that constitutional right. In that case, Brownbridge was Cutter's psychotherapist and thus was privy to "damaging personal details" about Cutter, which Brownbridge later assembled into a declaration and submitted to Cutter's former wife, who used it in her pending legal action to request that Cutter's child visitation rights be suspended. (183 Cal.App. at 840.) Cutter then filed a complaint against Brownbridge for, *inter alia*, vio-

lations of his constitutional and common law rights of privacy. Brownbridge's demurrer to the complaint was granted on the basis of the litigation privilege provided in Section 47(b)(2).

The court of appeal discussed the nature and extent of the constitutional right of privacy in depth, concluding that this right "reaches *beyond* the interests protected by the common law of right of privacy and may be protected from infringement by either the state or by any individual," citing *Porten vs. University of San Francisco,* 64 Cal. App.3d 825, 829 (1976) (emphasis added).

The appellate court in *Cutter* also expounded on the unique status which psychiatric records hold within an individual's privacy rights, (183 Cal.App.3d at 842-43), concluding that "Brownbridge's impressions and diagnosis, and other details of his professional relationship with Cutter fall within the zone of privacy protected by the State Constitution." (*Id.* at 843.)

The *Cutter* court found that the California constitution gives a citizen "a legal and enforceable right" (citing *White vs. Davis,* 13 Cal.3d 757, 774 (1975)), not a "mere inchoate right which may be effectively nullified by statutory elimination of the chief means of enforcement of that right." The court continued: "Any incursion into the protected interest should be construed, if possible, to preserve the privacy interests, and so that the statute is not applied in an unconstitutional manner." (183 Cal. App.3d at 844.) On that basis, the appellate court concluded that California Civil Code Section 47(b)(2) permits an infringement of the right of privacy by denying a remedy in damages when invasion of privacy occurs in a judicial proceeding, which, the court determined, "calls for constitutional scrutiny." (*Id.*)

Upon such constitutional scrutiny, the *Cutter* court held that the important public interest upon which the litigation privilege of Civil Code Section 47 is based "does not, however, justify or require a blanket immunity for voluntary disclosures of constitutionally protected information." (*Id.* at 845.) The court noted the California statutory scheme set up in Evidence Code Section 1014, whereby a patient has a privilege to refuse to disclose psychotherapy records and to prevent another from so disclosing, and whereby a psychotherapist must claim the privilege against non-disclosure as well (California Evidence Code Section 1015). Since no attempt had been made by the psychotherapist in *Cutter* to claim the privilege under the Evidence Code, the psychotherapist disclosed private information at his own risk, without protection from Civil Code Section 47. The appellate court held, 183 Cal.App.3d at 847:

> We have determined that the constitutional right to privacy outweighs the policies underlying the judicial proceedings immunity when private material is voluntarily published, without resort to a prior judicial determination.

Likewise, in *Urbaniak vs. Newton,* 226 Cal.App.3d 1128 (1991), the appellate court concluded that disclosure of HIV positive status is protected under Article I, Section 1, of the California Constitution. The *Urbaniak* court specifically held that the Civil Code Section 47 immunity was outweighed by plaintiff's constitutional right to privacy and did not immunize defendant from liability. (226 Cal.App.3d at 1141.)

The California Supreme Court has noted both decisions with apparent approval. *Cutter* was cited in *Hill vs. National Collegiate Athletic Association,* 7 Cal.4th 1 (1994),

without any disapproving comment, as one of the appellate court cases which had held that the state constitutional rights of privacy are effective against private parties. *Urbaniak* was cited in *Heller vs. Norcal Mutual Insurance Company*, 8 Cal.4th 30 (1994), as a decision which "may have been correct in its discussion of the right to privacy in the context of unauthorized disclosure of a patient's HIV status."[2]

Thus, petitioner submits that the "zones of privacy" found in the Bill of Rights of the United States Constitution are certainly broad enough to encompass the "quintessential" zone of privacy, *i.e.,* the human mind. For that reason, one of the few areas in which we document the inner workings of the human mind—psychotherapy records containing confidential communications between psychotherapist and patient—must be protected as zealously as this Court urged in *Jaffee*, by recognition of a constitutional right of privacy in psychotherapeutic records.

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[2] Numerous other California cases recognize a constitutional right of informational privacy in a patient's medical records, for reasons similar to those justifying constitutional protection for psychotherapy records. *See, e.g., Heller vs. Norcal Mutual Ins. Co.,* 8 Cal.4th 30, 42-44 (1994); *Lantz vs. Superior Court,* 28 Cal.App.4th 1839 (1994); *Davis vs. Superior Court,* 7 Cal. App.4th 1008, 1013-14 (1992); and *Heda vs. Superior Court,* 225 Cal.App.3d 525, 527 (1990).

II.

CONSTITUTIONAL PRIVACY INTERESTS MUST PREVAIL OVER STATE STATUTES WHICH PURPORT TO IMMUNIZE VIOLATIONS OF THOSE CONSTITUTIONAL RIGHTS

If, indeed, the right to privacy recognized as inherent in the United States Constitution encompasses the confidential information contained in private, confidential psychotherapy records, then clearly those constitutional rights must prevail as against state-created statutes of immunity, especially where those who violate the constitutional rights have carefully avoided discovery statutes or other means of judicial review which would entail balancing the constitutional rights with the state's interest in providing immunity.

The state interest behind the creation of the litigation privilege found in California Civil Code Section 47(b)(2) is clear: Those involved in the ascertainment of truth in litigation proceedings should not fear that their defenses, claims, or arguments will be subsequently used against them in a suit for damages or other relief. However, such immunity can be easily abused, as the facts herein amply demonstrate. Although the California Supreme Court has provided a four-prong test as a way of avoiding that abuse (*see Silberg vs. Anderson*, 50 Cal.3d 205 (1990)), that test was not created in response to claims of violations of constitutional rights.[3] Thus, if the *Silberg* test is

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[3] In *Silberg*, the California Supreme Court held that the privilege applies "to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation;

(continued...)

met, a litigant's *constitutional* rights may be denied by the California courts by immunizing litigants from liability for disclosing confidential and private information.

As the California Court of Appeal noted in *Rancho La Costa, Inc. vs. Superior Court,* 106 Cal.App.3d 646 (1980), the privilege created by California Code Section 47 is a law of "lesser organic force" than a constitutional right, and cannot be expanded to permit violation of the constitutional right of privacy:

> Plaintiffs as private individuals are entitled to the protection of their right of privacy. That right is entitled to redress when violated. Under the mandate of the recent federal Supreme Court rulings, the right of privacy is paramount to the right of free speech when in the exercise of free speech a defendant violates another's privacy by uttering a defamatory lie about him. The right of free speech guaranteed by the state and federal Constitutions does not permit violation of the right of privacy. It most surely follows that the privilege created by Civil Code section 47(3), a statute, and thus a law of lesser organic force, cannot be expanded to permit violation of that same right of privacy. Whatever privilege is accorded defendants under Civil Code section 47(3), it must yield to the plaintiffs' constitutional rights of privacy.

Thus, petitioner respectfully submits that where, as here, the "litigation privilege" of California Civil Code Section 47 is applied so as to defeat privacy interests

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[3] (...continued)
and (4) that have some connection or logical relation to the action." (50 Cal.3d. at 212.)

protected by the Federal Constitution, the statute is then being applied in an unconstitutional manner, and should be disallowed by this Court.

Respondents Mathew, Harpainter, Figueroa, and Keefer, have purposely and maliciously attempted to embarrass and harass Elizabeth Geiser by publicly disclosing psychotherapy records and other confidential documents of Ms. Geiser in a place where they knew they would do the most harm: the court records in the Superior Court of Nevada County, California, where Ms. Geiser was once the court's investigator, and to which she had many personal and professional ties. To insulate themselves from liability, they have cloaked themselves in a statutory privilege, claiming that because the documents were disclosed in the course of litigation, they cannot be sued for damages, nor can injunctive relief be obtained against them. The Superior Court of Nevada County applied that statutory privilege to bar Ms. Geiser from pursuing her claims for violations of her constitutional right of privacy. The California Court of Appeal has affirmed that application of Civil Code Section 47, thus creating the "state action" necessary to bring this matter before this Court. (See *New York Times vs. Sullivan,* 376 U.S. 264, 265 (1964).) Those decisions of the California courts should be vacated as constitutionally unsound.

III.

PUBLIC POLICY REQUIRES THAT THE CALIFORNIA COURTS' APPLICATION OF CALIFORNIA CIVIL CODE SECTION 47 BE REJECTED IN FAVOR OF THE CONSTITUTIONAL RIGHT OF PRIVACY

The contours of the right of privacy found in the United States Constitution are, of necessity, ever-changing to meet the tremendous challenges to individual privacy during the "information age." The potential for widespread public disclosure of extremely sensitive, private information about individuals has never been as real as right now, and this Court will face even thornier legal issues as our society is swept into the "age of the Internet."

The constitutional protection sought here reaches to the core of each person's humanity, to that "quintessential" zone of privacy. It is precisely these concerns which led this Court to recognize an evidentiary privilege for psychotherapeutic records in *Jaffee*.

The magnitude of the wrongs perpetrated against this Petitioner cannot be overstated, nor can the importance of this issue to society at large. Psychiatric records *must* be protected; their wrongful disclosure *must* be redressed. If our most intimate conversations with our psychiatrists and therapists are not protected by the "right to privacy," then privacy seems more a "privilege" than a "right."

CONCLUSION

For these reasons, and upon the authorities cited, Petitioner, Elizabeth Geiser, respectfully requests that this Court grant her Petition for Writ of Certiorari to the Court of Appeal for the Third District of California.

Respectfully submitted,

PAUL D. SHELDON
Counsel of Record
MARK A. CAMPBELL
SCHONEMAN, CAMPBELL & SHELDON
400 Capitol Mall, 11th Floor
Sacramento, California 95814
(916) 558-6185

Attorneys for Petitioner
Elizabeth Geiser

APPENDIX

[Filed April 21, 1995]

DEWEY V. HARPAINTER - SB #99756
ATTORNEY AT LAW
970 E. Main Street, Suite 202
Grass Valley, CA 95945
(916) 274-7022

Attorney for Defendants
RON MATHEW, HECTOR FIGUEROA, JAMES O. KEEFER and DEWEY V. HARPAINTER

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NEVADA

ELIZABETH GEISER, Plaintiff, v. RON MATHEW, DEWEY HARPAINTER, ESQ., HECTOR FIGUEROA, JAMES KEEFER, ESQ., and DOES 1 through 20, inclusive, Defendants.	)	NO. 53132 ORDER

On March 27, 1995, at 1:30 p.m., ELIZABETH GEISER's Petition under Civil Code Section 1714.10 to file a Complaint and Respondents' Motion to Strike Petition came on regularly for hearing before the Honorable Judge Reginald Littrell. Paul Sheldon appeared on behalf of Petitioner/Plaintiff ELIZABETH GEISER, who was

present in Court, and Dewey V. Harpainter appeared on behalf of Respondents/Defendants. After argument of counsel, the matters were submitted for ruling, and for good cause appearing:

IT IS HEREBY ORDERED:

(1) The Motion for leave to file civil conspiracy complaint against attorneys is denied.

(2) The Motion to strike complaint is granted.

(3) The Motion for sanctions is denied; and

(4) The Motion to seal the records is denied.

Dated: 4/19/95

/s/ Reginald Littrell
REGINALD LITTRELL
JUDGE OF THE SUPERIOR COURT

Approved as to form:

Paul Sheldon
Attorney for Plaintiff/Petitioner

[Filed May 31, 1996]

NOT TO BE PUBLISHED

COPY

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Nevada)

- - - -

ELIZABETH GEISER, C021291

Plaintiff and Appellant, (Super. Ct. No. 53132)

v.

RON MATHEW, et al.,

Defendants and Respondents.

Elizabeth Geiser appeals from the trial court's denial of her motion for leave to file a complaint alleging civil conspiracy against her ex-husband, a corporate director of her ex-husband's business, and their respective attorneys.[1] (See Civ. Code, Section 1714.10, subd. (d) .[2]) She contends her petition established a reasonable probability she would prevail in such an action. We affirm.

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[1] "[T]he petition procedure created by section 1714.10 is a special proceeding, and the adjudication of such a petition is a final, appealable order." (*Hung v. Wang* (1992) 8 Cal.App.4th 908, 935.)

[2] All undesignated statutory references are to the Civil Code.

FACTUAL AND PROCEDURAL BACKGROUND

Geiser and Ronald Mathew married January 21, 1989, and separated one year and five months later.[3] The parties divorced and divided their property pursuant to a stipulated judgment. After entry of the stipulated judgment, Geiser sued Mathew, Mathew's business, and Hector Figueroa, one of the business' corporate directors, in a separate action, seeking to recover approximately $20,000 she had loaned to the business. The trial court granted summary judgment as to Mathew individually based on a provision in the marital stipulated judgment. Geiser appealed, and we affirmed.

Geiser subsequently instituted in the instant lawsuit, alleging that in her previous action to recover the $20,000, Mathew, Figueroa, and their respective attorneys civilly conspired to invade her privacy, intrude on her private affairs, publicly disclose private facts, and engage in libel and slander per se.[4] The complaint, entitled "Complaint for Civil Conspiracy to Violate Rights of Privacy," alleges Mathew and his attorney included, as attachments to motions, "excerpts from psychiatric reports, confidential divorce mediation documents, [a] confidential letter form [the] Nevada County District Attor-

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[3] Mathew, Geiser's former husband, is deceased.

[4] We granted respondent's motion to augment the record. The previous superior court action was Nevada county Superior Court case number 49132. The complaint's allegations refer repeatedly to case number 49132, and also refer to Nevada County Superior Court case number 51858. The record reflects case numbers 49132 and 51858 were consolidated. The record also reflects Geiser filed a new action against her former husband's estate on October 13, 1995, after the administrator rejected Geiser's creditor's claim for $48,027.82.

neys [*sic*] office, and [a] confidential letter to Empire Title Insurance Company. . . ." The complaint also alleges defendants, in court documents, falsely accused plaintiff of criminal conduct; of social security fraud, and "of being a defendant in a civil action by Ron Mathew's former employer against Ron Mathew."

The trial court denied Geiser's motion for leave to file the civil conspiracy complaint and granted defendants' motion to strike the complaint.

DISCUSSION

Section 1714.10 states, in pertinent part: "No cause of action against an attorney for a civil conspiracy with his or her client arising from any attempt to contest or compromise a claim or dispute, and which is based upon the attorney's representation of the client, shall be included in a complaint or other pleading *unless the court enters an order* allowing the pleading that includes the claim for civil conspiracy to be filed *after the court determines that the party seeking to file the pleading has established that there is a reasonable probability that the party will prevail in the action . . .*" (Italics added.)

The legislative purpose of this section "was to eliminate frivolous allegations that attorneys have conspired with their clients. This statutory purpose is served by a construction that requires a prefiling procedure to determine whether the proposed conspiracy pleading is legally sufficient, and whether it is supported by a sufficient prima facie showing of facts to sustain a favorable decision if the evidence submitted by the petitioner is credited. If either of these requirements in not met, the petition must be denied; if both are satisfied, it must be granted.

This is a determination of law, not of fact." (*Hung vs. Wang, supra*, 8 Cal.App.4th at p. 931, citation omitted.) The plaintiff bears that burden of proof. (*Ibid.*)

Geiser has not carried her burden. From the face of the complaint, it is apparent that the bases for this action are documents, or statements within documents, filed in connection with a previous lawsuit, and these documents are protected by the litigation privilege of section 47.[5]

Section 47 provides in pertinent part: "A privileged publication or broadcast is one made: . . . . (b) In any . . . judicial proceeding . . . ." This privilege applies "to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212, citations omitted.) As we explain herein, the challenged documents satisfy each of these requirements.

Section 47 immunized defendants from tort liability based on invasion of privacy.[6] (*Silberg, supra,* 50 Cal.3d

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[5] Although Geiser's complaint also alleges defendants falsely accused her of "criminal conduct," "of being a defendant in a civil action by Ron Mathew's former employer against Ron Mathew," and "of the crime of social security fraud," Geiser does not offer arguments concerning these allegations on appeal. Accordingly, these arguments are waived.

[6] Geiser asserts section 47 may not be invoked against constitutional claims of privacy. She is mistaken. The California Constitution's privacy provision "protects one from the improper use of information which has been properly obtained." (*Cutter v. Brownbridge* (1986) 183 Cal.App.3d 836, 842.) Although section 47 does not provide "blanket immunity for dis-

(continued...)

at p. 215.) "[I]n immunizing participants from liability for torts arising from communications made during judicial proceedings, the law places upon litigants the burden of exposing during trial the bias of witnesses and the falsity of evidence, thereby enhancing the finality of judgments and avoiding an unending roundelay of litigation, an evil far worse than an occasional unfair result. . . . [¶] For our justice system to function, it is necessary that litigants assume responsibility for the complete litigation of their cause during the proceedings. To allow a litigant to attack the integrity of evidence after the proceedings have concluded, except in the most narrowly circumscribed situations, such as extrinsic fraud, would impermissibly burden, if not inundate, our justice system." (*Silberg, supra,* at p. 214, citations omitted.)

A clearer example of the necessity for the litigation privilege is hard to imagine. Geiser had every opportunity to object to the challenged documents as irrelevant or to move to place them under seal in the course of the previous action. To the extent she failed to proffer any objection, she waived her challenge. To the extent the trial court overruled her objections, she did not challenge

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[6] (...continued)
closures . . . of constitutionally protected privileged communications" (*id.* at p. 847), it does require a " 'careful balancing' of the relevant statutory and constitutional interests" where the constitutional right of privacy is at stake. (*Urbaniak v. Newton* (1991) 226 Cal.App.3d 1128, 1141.) "As a standard for recognizing the right to privacy, the test of reasonable expectations can sometime be circular: expectations will be reasonable where privacy is recognized. But the patient's expectations under the actual circumstances of disclosure are still relevant to evaluating the confidential nature of the disclosure." (*Ibid.* at fn. 5.)

those rulings in her previous appeal. Having failed to pursue her challenges during the prior proceedings, she now seeks to sue her former husband's estate and his attorney for money damages allegedly caused by the use of the assertedly confidential documents.

All of the challenged documents were introduced in judicial proceedings by the litigants or their attorneys, thus satisfying *Silberg's* first two prongs. With respect to the remaining two *Silberg* prongs: "The requirement that the communication be in furtherance of the objects of the litigation is, in essence, simply part of the requirement that the communication be connected with, or have some logical relation to the action, i.e., that it not be extraneous to the action." (*Id.* at pp. 219-220.) Each of the documents was relevant to the previous action, as we explain in turn.

A. *Psychiatric Reports*

Both Geiser's complaint and her accompanying declaration allege the challenged psychiatric reports were prepared from the California Workers Compensation Appeals Board in connection with her workers' compensation claim. She does not allege the reports were placed under seal or otherwise protected in the workers' compensation action.

The record indicates Geiser tendered her mental condition as an issue in the proceedings in case number 49132. Geiser's responses to interrogatories in the former action, which she included in this record on appeal, reflect that she sought $250,000 in damages for "mental and economic stress and suffering." The record reflects Geiser moved to seal her medical records in the previous

action; the trial court denied the motion "without prejudice and if it's something you really want to pursue, you can go ahead." At the hearing on this motion, although Mathew's counsel expressly stated he opposed sealing the medical records because "[Geiser]'s claiming emotional distress as part of the damages," Geiser did not discuss the records' purported irrelevancy, and the record contains no indication Geiser ever pursued this matter further. On this record, the psychiatric reports fall within the litigation privilege.

B. *District Attorney's Letter*

Geiser also challenges "a personal and confidential letter" from the Nevada County District Attorneys office, containing "sensitive, confidential and personal information relating to matters between the district attorneys [*sic*] office and Elizabeth Geiser." This letter refers to the filing of a felony complaint against Geiser in Grass Valley Judicial District Court. As an initial matter, the letter contains no reference to confidentiality, and in fact, indicates a copy of the letter was sent to the Grass Valley Judicial District Court.

According to Mathew's declaration, to which this letter was appended as an exhibit: "[Geiser] has alleged criminal conduct in my handling of the corporation in relation to my ex-employer. . . . Without arguing the truthfulness of [Geiser's] allegations, attached hereto as Exhibit 1 is a true and correct copy of a letter to plaintiff from the Nevada County District Attorney, charging *her* with the criminal conduct she has set out in the complaint. . . ." (Emphasis in original.) On this record, the district attorney's letter comes within the litigation privilege.

C. *Escrow Instructions*

Geiser's next challenge concerns "a personal and confidential letter written by plaintiff Elizabeth Geiser to Empire Title Company." This letter contains modifications to escrow instructions in escrow number 108734. There is no indication this letter was confidential. Included in this two-paragraph letter are references to the trial court's decision in case number 49123: "Based upon Judge Jack Bermans' having signed and caused to be filed and entered a judgment, and solely based upon that event, Condition No. 2 is hereby eliminated from the Petition's escrow instructions dated June 22, 1993. However, in so doing, Petitioner, Elizabeth Mathew [Geiser], does not acknowledge the validity nor accept Judge Berman's determination as to the form of the judgment. Petitioner reserves the right to pursue all available remedies with regard to the form of the judgment which are satisfactory to her. . . ."

After entry of the stipulated judgment in the divorce action, Geiser instituted a civil action against Mathew, his business, and others to recover her $20,000 loan. When this effort resulted in summary judgment for Mathew, she attempted to set aside the stipulated judgment in the divorce action on the basis of fraud or mistake. Geiser's letter to Empire Title Company was dated three days after her correspondence to the trial judge concerning the form of the proposed stipulated judgment, and Mathew introduced the letter as evidence Geiser understood the settlement terms. The record contains no indication Geiser challenged this letter in the previous action as irrelevant. On this record, the letter to Empire Title Company comes within the litigation privilege.

D. *Divorce Mediation Document*

Finally, the complaint alleges defendants filed, as exhibits to declarations and an oral argument, "confidential divorce mediation documents." Although the complaint refers to "documents" plural, only one such document is in the record—Geiser's "Statement of Issues and Contentions for Mediation." There is nothing in the record on appeal indicating the confidentiality of this document.[7]

In moving to set aside the stipulated marital judgment, Geiser contended she had been misled into believing she would be permitted to bring a separate civil action for her separate property contributions to Mathew's business. Mathew's opposition to the motion observes, "It is unbelievable that Petitioner expressly protected two sawhorses, a headboard and a metal cabinet while leaving her alleged $19,000 claim out of the settlement." (Emphasis omitted.) The Statement of Issues and Contentions, dated in September 1991, demonstrates Geiser's focus on her separate property capital contribution to the business. On this record, the document comes within the litigation privilege.

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[7] Geiser's reply brief asserts she "found an order of the superior court of Nevada County, signed by Judge Reginald Littrell, dated October 25, 1991, which, Exhibit 'A,' states that the parties agree to engage in confidential mediation as to all issues." The reply brief additionally asserts: "Appellant has filed, contemporaneously with this brief, a motion pursuant to California Rules of Court, Rule 23, to produce the order of Judge Littrell as additional evidence on appeal and have the order added to the record on appeal." The record on appeal contains no such motion, nor a motion to augment concerning this document pursuant to the California Rules of Court, rule 12.

The challenged documents were protected by the litigation privilege of section 47. There is no reasonable probability Geiser would prevail in a section 1714.10 action. The trial court did not err in striking the complaint.[8]

DISPOSITION

The judgment (order) is affirmed. Respondents shall recover their costs on appeal.

NICHOLSON, J.

We concur:

SIMS, Acting P.J.

SCOTLAND, J.

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[8] Plaintiff alleged Figueroa attached the letter to Empire Title Company and excerpts from the psychiatric reports to a motion to strike. From the face of the complaint, the psychiatric reports were already part of the court record, and the letter to the title company was simultaneously filed by Mathew and Figueroa. Since these documents were already properly part of the court's record, their inclusion in Figueroa's motion is not actionable.

A-13

[Filed September 4, 1996]

Third Appellate District No. C021291
S054817

IN THE SUPREME COURT OF CALIFORNIA

ELIZABETH GEISER, Appellant

v.

RON MATHEW, Et Al., Respondents

Appellant's petition for review DENIED.

GEORGE
Chief Justice

California Code of Civil Procedure Section 47
"Privileged communication or broadcast"

A privileged publication or broadcast is one made:

(a) In the proper discharge of an official duty.

(b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except as follows:

(1) An allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment and unless the allegation or averment is material and relevant to the issues in the action.

(2) This subdivision does not make privileged any communication made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation of the use of that evidence, whether or not the content of the communication is the subject of a subsequent publication or broadcast which is privileged pursuant to this section. As used in this paragraph, "physical evidence" means evidence specified in Section 250 of the Evidence Code or evidence that is property of any type specified in Section 2031 of the Code of Civil Procedure.

(3) This subdivision does not make privileged any communication made in a judicial proceeding knowingly concealing the existence of an insurance policy or policies.

(4) A recorded lis pendens is not a privileged publication unless it identifies an action previously filed with a court of competent jurisdiction which affects the title or right of possession of real property, as authorized or required by law.

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a communication concerning the job performance or qualifications of an applicant for employment, based upon credible evidence, made without malice, by a current or former employer of the applicant to, and upon request of, the prospective employer. This subdivision shall not apply to a communication concerning the speech or activities of an applicant for employment if the speech or activities are constitutionally protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other provision of law.

(d) By a fair and true report in a public journal, of (1) a judicial, (2) legislative, or (3) other public official proceeding, or (4) of anything said in the course thereof, or (5) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.

(e) By a fair and true report of (1) the proceedings of a public meeting, if the meeting was lawfully convened for a lawful purpose and open to the public, or (2) the publication of the matter complained of was for the public benefit.

California Civil Code Section 1714.10
"Cause of action against attorney
based on civil conspiracy with client"

(a) No cause of action against an attorney for a civil conspiracy with his or her client arising from any attempt to contest or compromise a claim or dispute, and which is based upon the attorney's representation of the client, shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes the claim for civil conspiracy to be filed after the court determines that the party seeking to file the pleading has established that there is a reasonable probability that the party will prevail in the action. The court may allow the filing of a pleading claiming liability based upon such a civil conspiracy following the filing of a verified petition therefor accompanied by the proposed pleading and supporting affidavits stating the facts upon which the liability is based. The court shall order service of the petition upon the party against whom the action is proposed to be filed and permit that party to submit opposing affidavits prior to making its determination. The filing of the petition, proposed pleading, and accompanying affidavits shall toll the running of any applicable statute of limitations until the final determination of the matter, which ruling, if favorable to the petitioning party, shall permit the proposed pleading to be filed.

(b) Failure to obtain a court order where required by subdivision (a) shall be a defense to any action for civil conspiracy filed in violation thereof. The defense shall be raised by the party charged with civil conspiracy upon that party's first appearance by demurrer, motion to strike, or such other motion or application as may be appropriate. Failure to timely raise the defense shall constitute a waiver thereof.

(c) This section shall not apply to a cause of action against an attorney for a civil conspiracy with his or her client, where (1) the attorney has an independent legal duty to the plaintiff, or (2) the attorney's acts go beyond the performance of a professional duty to serve the client and involve a conspiracy to violate a legal duty in furtherance of the attorney's financial gain.

(d) This section establishes a special proceeding of a civil nature. Any order made under subdivision (a), (b), or (c) which determines the rights of a petitioner or an attorney against whom a pleading has been or is proposed to be filed, shall be appealable as a final judgment in a civil action.

(e) Subdivision (d) does not constitute a change in, but is declaratory of, the existing law.

California Constitution, Article I, Section I
"Inalienable rights"

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.